No. 11704

In the United States Circuit Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

PAYETTE BARON IRRIGATION DISTRICT, A PUBLIC CORPORATION, APPELLEE

PAYETTE BARON IRRIGATION DISTRICT, A PUBLIC CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON

REPLY AND ANSWER BRIEF FOR THE UNITED STATES

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CITATIONS

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Since the issues upon which the District's cross-appeal depend are the same as those which determine the Government's appeal, the Government will not separate its argument into two parts. It is believed that so much of the District's brief as requires comment can be discussed under the caption which was employed in the first brief for the United States.[1]

[1] The District's argument in defense of the trial court's misapplication of the $170,500 deposited as estimated just compensation (pp. 68–71) presents nothing which warrants reply.

ARGUMENT

I

By acquiring at fair market value all the lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the District for the owners of land in the District and was entitled to the legal title thereto without a further payment for the benefit of the former landowners

The Government's first brief was premised upon a single contention, so apparent that quite fairly it may be called a statement of fact. It is this (pp. 14–17): Landowners in the Priest Rapids Irrigation District *could not sever* their equitable interests in the properties to which the District had title from the lands to which they had title. Therefore, when the landowners—either by conveyance or condemnation—were divested of title to the lands, necessarily they ceased to have any equitable interest in the District-held properties. Accordingly, as the United States concluded (pp. 17–20) when it acquired all the privately-owned lands in the District, it became the sole beneficiary of the District and in fact the owner of the properties to which the District held title. Obviously, it cannot be compelled to pay a half-million of dollars to obtain the mere muniment of its ownership.

Since the Government's premise (pp. 14–17) is sound, its conclusion (pp. 17–20) follows as of course. As might be expected, the premise has never been answered. Concerning it, the trial judge (Judge Driver) said (R. 284): "* * * there is a very strong legal basis for the Government's position. It is a matter of cold logic for the Government's posi-

tion. The Government's position is almost unanswerable, it seems." Then, he rejected it with the comment that "we have here a peculiar situation" (R. 284). The District is equally inarticulate. While it purports to devote a portion of its brief to the matter (pp. 60–64) that part—and as well the rest of the brief—does not even *mention* the question upon which the case depends.

Nor does the District's brief (pp. 56–60) controvert the Government's earlier statement (pp. 12–14) that it has paid the former landowners the fair market value of their lands. While unnecessary as a matter of law, this statement was made in order to dissipate possible suspicions that these people might have been lulled into accepting from the Government less than they could have obtained in the market and that their acquiescence was induced by an impression that in the case at bar the difference would be made up.[2] Consequently, it is now plain that, for their lands *and* for their beneficial interest in the properties here involved, the former landowners received as much as they would have obtained in the market. This constituted just compensation for whatever they had. For—

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[2] This was also the purpose of Mr. Ramsey's affidavit of which the District complains (pp. 58–60). The District's complaint is not well-taken. The Government quite understands that matters of evidence which could have been but were not presented for the consideration of the trial court may not be brought forward on the appeal—by affidavit or otherwise. See e. g. *Hovland* v. *Smith*, 22 F. 2d 769, 770. But its affidavit is a statement of matters which, taking place in the trial court, were well known to the trial judge.

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of private property between private parties." *Boom Co.* v. *Patterson,* 98 U. S. 403, 407–408 (1878). That value is the "sum that would in all probability result from fair negotiations between an owner who is willing to sell and a purchaser who desires to buy." *Brooks-Scanlon Corp.* v. *United States,* 265 U. S. 106, 124 (1924). This sum is the market price. And market price is just compensation. For as the Supreme Court has held (*United States* v. *New River Collieries,* 262 U. S. 341, 344 (1923)): "Where private property is taken for public use, and there is a market price prevailing at the time and place of the taking, that price is just compensation." Before and since the principle has been often stated. See e. g., *Boom Co.* v. *Patterson,* 98 U. S. 403, 407–408 (1878); *Reagan* v. *Farmers' Loan & Trust Co.,* 154 U. S. 362, 410 (1894); *United States* v. *Chandler-Dunbar Co.,* 229 U. S. 53, 80 (1913); *Vogelstein & Co.* v. *United States,* 262 U. S. 337, 340 (1923); *Standard Oil Co.* v. *Southern Pacific Co.,* 268 U. S. 146, 155 (1925); *Olson* v. *United States,* 292 U. S. 246, 256–257 (1934); *United States* v. *Miller,* 317 U. S. 369, 373–374 (1943).

The District refers (pp. 57–58) to its unsuccessful attempt to introduce evidence of the total amount paid by the Government for the individually-owned lands and (p. 59) to the unsuccessful attempts of landowners in earlier trials to introduce evidence of the "value" of the District-held properties. These

rulings (not appealed from) were, of course, correct. In this case, evidence as to the amounts paid for the individually-held lands was not relevant. For the issue here is the effect of the acquisitions and this effect in no way depends upon their cost. The rejected offers in the earlier cases were equally inapposite. Obviously, as the Government's first brief pointed out (pp. 16–17), private parties dealing in a parcel of land in the District would not—in order to determine its market price—make a valuation of the District-held properties. Consequently, such a valuation had no place in a judicial proceeding to fix the value of that land.

And, despite the District's hints (see e. g. p. 58) no inference favorable to it results from the fact that the total cost of acquisition—said to be $630,960.80—was less than the jury's appraisal of all the District-held properties at $839,201. Conceivably, properties physically comparable to those here involved could have a market value of $839,000. But they would be properties which could be employed in the generation and sale of electricity *for profit* and not like those here, which were bound to the lands in the District, which were first called on to serve those lands, which could only sell electricity not needed for this service, and which had to use the revenues from such surplus sales to lessen the charges upon these lands. The notion that anyone would pay for properties so fettered $839,000 (as the District contends) or $437,000 (as the jury found under the court's instructions) is fantastic. On

the contrary, it is clear that—as the Government contends—they were worthless.

Here and there (see e. g. pp. 35–45, 56–57, 60–61, 68) the District argues that, since the market value of lands in the District was also influenced by their proximity to public utilities, the necessary effect of the Government's contention must be that, in acquiring the lands, it acquired also these public utilities. Of course, this is not so. When the Government obtained the lands in the District, it obtained only what was inseparable from the lands. Since land ownership did not carry with it any property right in public utilities, the United States did not acquire a share of such utilities. Nor—as might be added—any stock therein incidentally owned by any former landowner in the District.

There is no substance to the District's attempts (pp. 46–48, 64–68) to distinguish *In re Horse Heaven Irrigation District,* 11 Wn. 2d 218, 118 P. 2d 972 (1941). True, as the District argues (pp. 45–51, 64), the Government's obligation to make just compensation may not be altered or impaired by state statute or decision. See e. g. *United States* v. *Miller,* 317 U. S. 369, 380 (1943). However, the determination of what is taken depends upon the law of the State where the property is situated. *United States* v. *Puget Sound Power & Light Co.,* 147 F. 2d 953, 954 (1944); *United States* v. *Becktold Co.,* 129 F. 2d 473, 477 (C. C. A. 8, 1942). So here, the measurement of just compensation for land within an irrigation district in the State of Washington is made in accord with the

principles enunciated by the federal courts. But the rights that inhere in ownership of such land are defined by the statutes of Washington and the decisions of its courts.

The *Horse Heaven* decision is merely a statement of the obvious. It rests upon the premise that title to land in an irrigation district cannot be severed from beneficial interest in the properties which the district holds for the benefit of the landowners. This is so whether the district is operating or in process of liquidation, whether it is debt-free or insolvent, whether the property it holds for its landowners is money or, as here, a generating plant. An irrigation district is a municipal corporation, the ownership of which is evidenced by land rather than shares of stock. And just as a shareholder divests himself of his interest in the usual corporation by selling his stock so the landowner divests himself of his interest in an irrigation district by selling his land. If the sovereign should take all the stock of a corporation, it would by that act require all its physical assets. *In re Morris Canal and Banking Co.*, 104 N. J. L. 526, 141 Atl. 784 (1928). So by taking all the land of an irrigation district, the United States acquired the properties to which the District held title.

CONCLUSION

Accordingly, it is submitted that the judgment of the district court should be reversed and the cause remanded with directions to enter a judgment for a nominal amount or, in any event, for an amount which

will take into account the sum deposited as estimated just compensation.

Respectfully.

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